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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/984,739	01/05/2011	Mitchell L. SORBY	19417	2905

15755 7590 02/01/2017
CNH INDUSTRIAL AMERICA LLC
700 State Street
Racine, WI 53404

EXAMINER

HAN, CHARLES J

ART UNIT	PAPER NUMBER
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3662

NOTIFICATION DATE	DELIVERY MODE
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02/01/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MITCHELL L. SORBY and TIM A. NEWLIN

Appeal 2015-003933¹
Application 12/984,739²
Technology Center 3600

Before ANTON W. FETTING, PHILIP J. HOFFMANN, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the rejection of claims 1, 3–12, 14–19, and 21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants' Specification ("Spec.," filed Jan. 5, 2011), Appeal Brief ("Appeal Br.," filed Oct. 8, 2014), and Reply Brief ("Reply Brief," filed Feb. 4, 2015), as well as the Final Office Action ("Final Action," mailed Apr. 8, 2014) and the Examiner's Answer ("Answer," mailed Dec. 4, 2014).

² Appellants indicate that CNH Industrial America LLC is the real party in interest. Appeal Br. 2.

According to Appellants, the invention relates “to safety systems for work vehicles having operator cabs.” Spec. ¶ 1. Claims 1, 14, and 21 are the only independent claims. *See* Appeal Br., Claims App. We reproduce claim 1, below, as representative of the appealed claims.

1. A work vehicle comprising:

a motor associated with selectable movement of a frame by operator controls; and

the frame structurally carrying a cab structure and a first manipulating structure associated with a first implement for performing work, the first manipulating structure selectably movable by the operator controls located in the cab structure, the cab structure including a transparent member coupled to a sensor, wherein the sensor is configured to be communicatively coupled to a source of electrical power and to detect a partial structural failure of the transparent member;

wherein in response to detection of the partial structural failure by the sensor, the first manipulating structure is no longer selectably movable by the operator controls, while the operator controls continuously permit selectable movement of the frame by the motor to enable relocation of the work vehicle to repair the transparent member.

Id.

REJECTIONS AND PRIOR ART

The Examiner rejects claims 1, 3–8, and 21 under 35 U.S.C. § 103(a) as unpatentable over Wherley (US 7,080,708 B2, iss. July 25, 2006) and Jessup (US 6,794,882 B2, iss. Sept. 21, 2004).

The Examiner rejects claims 9–11 and 14–18 under 35 U.S.C. § 103(a) as unpatentable over Wherley, Jessup, and Heyne (US 6,226,902 B1, iss. May 8, 2001).

The Examiner rejects claims 12 and 19 under 35 U.S.C. § 103(a) as unpatentable over Wherley, Jessup, Heyne, and Gage (US 4,809,586, iss. Mar. 7, 1989).

Final Action 6–21; *see also* Answer 3.

ANALYSIS

Based on our review of the record, for the reasons discussed below, Appellants do not persuade us that the Examiner’s obviousness rejections of the claims are in error. Thus, we sustain the rejections.

With respect to the rejection of independent claims 1 and 21, and claims 3–8 depending from claim 1, Appellants argue that “there is no basis, other than impermissible hindsight analysis, for the [E]xaminer to suggest that movement of the loader lift arms of Wherley may be stopped upon detection of a ruptured windshield.” Appeal Br. 10; *see also id.* at 8–10; *see also* Reply Br. 2–3. We disagree, however.

As found by the Examiner, “Wherley teaches disabling the loader lift arms in response to an unsafe vehicle operating condition Jessup teaches detecting a rupture condition of a window because a ruptured window is . . . [a] safety hazard.” Answer 4. The Examiner also determines that

[f]inally, the motivation to combine these references explicitly comes from . . . Jessup itself, reciting: “If a failure or rupture of a windshield assembly is detected early enough, the vehicle can be brought to a safe condition in a quicker manner or, alternatively, this early detection allows for early mitigation, thus increasing vehicle safety” (see Jessup at col. 1, lns. 46–50). Thus it would have been obvious for the person of ordinary skill in the art to combine Wherley and Jessup such that when a failure or rupture of a windshield assembly is detected, the vehicle can be

brought to a safe condition (i.e. disablement of the loader lift arms) in a quick manner, so as to increase vehicle safety as explicitly expressed by Jessup.

Id. at 4–5 (emphasis omitted). Appellants do not argue persuasively that such a motivation from Jessup is inadequate to support the Examiner’s conclusion of obviousness. Reply Br. 2. Therefore, we sustain the rejection of claims 1, 3–8, and 21.

Although Appellants separately argue against the rejections of claims 9–12 and 14–19, the arguments are based on the alleged failure of additional references to teach or suggest the above discussed limitations. *See* Appeal Br. 11–12; *see also* Reply Br. 3–4. Thus, because we determine that the Examiner properly combines Wherley and Jessup to teach the above limitations, Appellants’ arguments are not persuasive, and, we sustain the rejections of claims 9–12 and 14–19.

DECISION

We AFFIRM the Examiner’s obviousness rejections of claims 1, 3–12, 14–19, and 21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED